No. 92-1319

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

I. HYEON SU, *et al.*,

Petitioners,

v.

M/V SOUTHERN ASTER, *et al.*,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED: RESPONDENT'S COUNTERSTATEMENT

1. Whether individuals in whose name a union sued but who were not parties in the trial court may appeal the trial court's judgment.

2. Whether a seaman on a foreign vessel can recover under 46 U.S.C. §10313 if the events ordinarily creating a right under that section do not occur in a United States harbor.

3. Whether the trial court misapplied FRCP 12(b)(6) and whether the court of appeals erred in not reversing its judgment on that ground.

Pursuant to Sup. Ct. R. 29.1, notice is given that:

There are no parent companies, subsidiaries or affiliates of Southern Aster Navigation, S.A.

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RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE NINTH CIRCUIT COURT OF APPEALS

Respondents M/V Southern Aster and Southern Aster Navigation, S.A., respectfully request that this Court deny certiorari to review the judgment entered in this case by the United States Court of Appeals for the Ninth Circuit on October 14, 1992, and reported at 978 F.2d 462.

COUNTERSTATEMENT OF THE CASE

Respondents do not accept Petitioners' Statement of the Case, and will provide relevant counterstatement in the Reasons for Denying the Writ. Failure to contradict a specific allegation does not signify acceptance of the allegation, but merely a desire to spare the Court unnecessary work.

The Cross-Petition for Writ of Certiorari, No. 92-1521, and the Brief in Opposition to Certiorari in No. 92-1316, *Raby v. M/V Pine Forest*, provide important background for this action. This brief assumes familiarity with the Statement of the Case in those pleadings.

REASONS FOR DENYING THE WRIT

I.

PETITIONERS ARE NOT PROPERLY BEFORE THE COURT AS THEY WERE NOT PARTIES BELOW.

The eight named "petitioners" are Korean citizens who were not parties below, and are not now properly before the court. The action was brought by the Federated Korean Seamen's Union, which added the men's names to

the complaint without their knowledge or consent. The Union does not join in the petition, and does not petition on its own.

The sole basis for the Union's authority to use the petitioners' names appears in Paragraph 15 of the Complaint:

> Plaintiff FKSU is a labor union licensed in the Republic of Korea and is authorized to bring suit in the name of seafarers on board the M/V Southern Aster. The crew members on board the M/V Southern Aster granted this authority to FKSU by their membership in said union, and the Defendants acknowledged and agreed in their Collective Bargaining Agreement that the FKSU has the right to represent said crew members and bring legal action in their names on their behalf.

In subscribing, the Union's counsel, Mr. Dodson, asserted:

> That I have been appointed and retained, and I am presently serving as legal counsel in the United States of America for the Federated Korean Seamen's Union and in behalf of said union and its members I have been requested to initiate the instant proceeding. Further, I have been provided information by my client . . . and . . . all of the allegations . . . are in accordance with the information provided by my client . . . .

A. 18-19. No petitioner ever joined in the action during the time it was pending in the district court.

Before arresting the Southern Aster, Mr. Dodson had begun two other cases against foreign ships doing business on the West Coast of the United States. In late January, 1990, he sued and arrested, first, the Fir Grove, in Oregon, then the Pine Forest, in Tacoma, Washington. Fourteen of the Fir Grove seamen joined in the suit and

left the ship in Oregon. Five stayed aboard and declined to join in the suit, whereupon Mr. Dodson sued in their names on behalf of AMOSUP, the Philippine union. Thirteen of the Pine Forest seamen sued their vessel. The remainder declined to sign the complaint, stayed with the ship, and were discharged in Japan at the end of their contracts. AMOSUP later added their names to the complaint without their consent, and prosecuted the action purportedly on their behalf even after they signed voluntary dismissals. *Su v. M/V Southern Aster*, 978 F.2d 462 (9th Cir. 1992) at 466; Petitioners' Appendix 4-8.

When the Southern Aster, a Panamanian vessel owned by Japanese interests, arrived on the Oregon coast in the third week of February, 1990, Mr. Dodson arrested it on behalf of seamen who were on it at the time. Security was quickly posted. When the ship was released he arrested it again, asserting he acted with authority from the FKSU to sue for a former crew, the last member of which had left the ship in Japan in June of 1989. Petitioners were members of that crew.[1]

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[1] The Complaint included as Exhibit "A" a portion of the shipping articles of the Southern Aster. Pages 2 and 3 of this exhibit contain information about the individual seamen, including their names, ages, addresses and other personal information in the first, or left-hand segment, information about the "Port of Enrollment" in the center segment, and information about the "Port of Discharge" in the right-hand segment. In the right-hand segment, the center column records the place of discharge and the date of discharge. The latest discharge date is June 24, 1989.

A. The Action Was Brought by The Federation of Korean Seafarers Union, Which Claimed to Act On Behalf of the Seamen. The Seamen Never Consented, Never Verified The Complaint, And Never Made Any Form of Appearance In The Case.

The complaint was not verified by any of the seamen. Verification is required by Supplemental Admiralty Rule C(2), (3). The complaint does not allege that the seamen assigned their claims to the Union. It bases the Union's authority to sue solely on the fact that the men were union members. (App. 6a, ¶ 15.) The union alleged no claims of its own.

A week after the arrest Mr. Dodson told the district court that the seamen were scattered throughout Korea and had not seen or read the complaint. (App. 17a-18a) He asked for a two-week stay to obtain verifications. *Id.* Either he did not pursue this matter or he was unsuccessful. No verifications were ever submitted. No individual plaintiff ever appeared in the court below.

In the Ninth Circuit, when he was challenged about the right of the petitioners to appeal, Mr. Dodson asserted that he had individual retainers from them, but he did not say when he got them – whether before or after judgment – and he did not produce them.

It seems clear that Mr. Dodson attempts to appear for eight seamen who were never parties to the underlying action, but are attempting after the multimillion dollar judgment in the Pine Forest case to become part of the action at the appellate level.

B. The Union Did Not Have Standing To Assert Individual Wage Claims On Behalf of The Seamen.

The FKSU, a foreign union, had no standing to bring the individual crew members' wage claims, and the district court had no subject matter jurisdiction. *Charley's Taxi Corp. v. SIDA of Hawaii, Inc.*, 810 F.2d 869, 874 (9th Cir. 1987). Even an American union would not have standing to bring the action under 46 U.S.C. §10313. In *Warth v. Seldin*, 422 U.S. 490, 515-516 (1975), this Court held that an association has no standing to claim money damages for injuries to its members because such claims are neither common to the entire membership nor shared by all in equal degree. See also *United Steelworkers v. University of Alabama*, 599 F.2d 56, 59 (5th Cir. 1979); *United States ex rel. United Brotherhood v. Woerfel Corp.*, 545 F.2d 1148 (8th Cir. 1976); *U.S. Bulk Carriers, Inc. v. Arguelles*, 400 U.S. 351 (1971). The courts below did not reach this question, but if every other issue had been resolved in Mr. Dodson's favor, this one would still prevent recovery. It makes his present pursuit academic.

II.

THE "QUESTION PRESENTED" BY PETITIONERS IS NOT RAISED BY THE DECISION OF THE COURT OF APPEALS. IT IS NOT A QUESTION ON WHICH THE PARTIES DISAGREE, AND IT IS NOT AN IMPORTANT QUESTION.

The Court of Appeals held that petitioners could not recover under subsection (f) of §10313 because they had been discharged in a foreign port, and that they could not recover under subsection (e) because they had not made a demand for half wages while they were in a port of the United States. 978 F.2d at 470, 472. These were the

sole dispositive holdings affecting the claims that petitioners ask this Court to review.

These holdings raise essentially two questions:

> (1) Whether a seaman on a foreign vessel can have a cause of action for wages and penalties under § 10313-(f) and (i) when his employment terminated not in a U.S. harbor, but in a foreign harbor;
>
> (2) Whether the signing of a wage receipt in a U.S. harbor by a seaman on a foreign vessel should be treated as a demand for half wages.[2]

Id. at 472.

This statement of the questions presented differs significantly from the "question presented" in the petition:

> [Whether] an extraterritorial discharge of a seaman prohibits the application of the Seaman's Wage Act when the wrongful withholding of wages occurred while the seaman was on a foreign vessel in a harbor of the United States.

Petition at i. This question would have been presented if the court of appeals had held that there had been a "wrongful withholding of wages" in a U.S. harbor, but that nevertheless the petitioners had no cause of action because they had been discharged on a foreign harbor. But the court of appeals did not hold this. Expressly with respect to § 10313(f) and implicitly with respect to § 10313(e), it held that a "wrongful withholding of

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[2] We believe the court of appeals was far too generous to petitioners in framing the subsection (e) issue. There was no allegation in the complaint that any of the alleged withholding occurred in a U.S. harbor. In addition, the complaint stated that the request or demand was for full wages, not half wages, which we contend does not satisfy the requirements of § 10313(e).

wages" in a U.S. harbor under either section is enough to state a claim, but that there had been no wrongful withholding of wages while the vessel was in a U.S. harbor. 978 F.2d at 472.

All remaining parties in this action and the Ninth Circuit agree that the wrongful withholding of wages under (e) or (f) must occur in a U.S. harbor for a seaman on a foreign vessel to have a cause of action.[3] Petitioners' acceptance of this proposition appears, *inter alia*, at p. 17 of the petition. The parties and the Ninth Circuit also agree that an extraterritorial discharge does not necessarily preclude a claim when conduct violating the Act occurs in a U.S. harbor. In short, petitioners have framed a question with an answer all agree on. But if this Court were to grant certiorari and answer that question in petitioners' favor, it would not resolve the issues raised by the Ninth Circuit's decision. That is why the "question presented" by petitioners is of no importance.

Petitioners' purported "question," however, does create confusion. More importantly, it obscures and overstates the importance of the different question that in fact is being presented to this Court. The confusion is created because the question speaks not of any particular subsection of §10313 – each of which has its own requirements – but simply of "the Seaman's Wage Act," by which it apparently means both subsections (e) and (f) of the Act, but not the other subsections.[4]

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[3] The union in this case, FKSU, and the union in the *Fir Grove* and *Pine Forest* cases, AMOSUP, did not agree that the wrongful withholding must take place in a U.S. harbor. Much of the Ninth Circuit's opinion on the question of whether a seaman on a foreign vessel must be discharged in a U.S. harbor responds to the unions' arguments. But since petitioners have not taken the same position, this Court need not deal with the issue.

[4] This is a common usage, but by no means the only one. "The Seaman's Wage Act" often means all of the subsections of

[footnote continued]

The significance of an extraterritorial discharge under the Act, however, varies radically depending upon the subsection under discussion. Under subsection (e) whether a seaman on a foreign vessel is discharged in the United States or in a foreign nation ordinarily is irrelevant. The critical question is whether a demand for half wages was made in a U.S. harbor and was rejected by the vessel. If it was, then the seaman has a cause of action irrespective of where he is discharged. The court of appeals recognized this implicitly at p. 472, col. 1, of its opinion. But it found that there had been no demand in a U.S. harbor. Thus, that court did not disqualify petitioners' subsection (e) claim because of an extraterritorial discharge, but because there was no wrongful withholding of wages within a U.S. harbor.

The analysis under subsection (f), however, was very different. Under that subsection, termination of the seaman's employment was held to be an element of the cause of action; that is, there is no cause of action until the seaman's employment comes to an end. In addition, the court held that for a seaman on a foreign vessel to recover under subsection (f), subsection (i) requires that the termination of his employment occur in a U.S. harbor – because under that subsection all of the elements of a §10313 claim must occur in a U.S. harbor. 978 F.2d at 471-72. Thus, under subsections (f) and (i), unlike subsection (e), termination of the seaman's employment (i.e., the seaman's discharge) in a U.S. harbor is not only relevant, it is critical to state a cause of action. In petitioners' words, there can be no "wrongful withholding of wages" under §10313(f) for a "seaman

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§10313, and sometimes also §10314 and 10315, which also directly regulate a seaman's wages.

on a foreign vessel in a harbor of the United States" if the seaman is not discharged in that harbor.[5]

Petitioners admit that they were discharged in a foreign harbor. Thus they apparently must admit that there was no wrongful withholding of their wages *under subsection (f)* in a harbor of the United States, unless they argue that subsection (f) does not require that the seaman's employment terminate before he has a cause of action. The petitioners in the related *Raby* case, No. 92-1316, did make that argument. But the petitioners in this case, although represented by the same counsel, do not. For purposes of this appeal, then, they have accepted the following propositions: (1) for a seaman on a foreign vessel to have a cause of action under any subsection of §10313, there must be a wrongful withholding of his wages in a U.S. harbor; (2) there cannot be a wrongful withholding under subsection (f) unless the seaman has been discharged; and (3) the seamen here were not discharged in a U.S. harbor. Having accepted these premises, petitioners logically preclude themselves from arguing that the Ninth Circuit erred insofar as it denied their claim under subsection (f).

Thus the first of the possible holdings of the Ninth Circuit that petitioners could challenge here – that a seaman on a foreign vessel has no cause of action under §10313(f) if he is discharged in a foreign port – has not in fact been challenged and thus presents this Court with no question on the subject.

The argument of the petition for certiorari, therefore, can only be construed to challenge the Ninth Circuit's

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[5]The seaman's discharge also figures in another of the elements of the §10313(f) cause of action – the requirement that payment be made within one day of cargo discharge or four days of the seaman's discharge.

second holding – i.e., that there was no wrongful withholding of wages in a U.S. harbor under subsection (e) because there was no demand for half wages in a U.S. harbor. A critical analysis of the petition, we believe, will confirm that this is the only question that it actually addresses, despite much diversionary verbiage.

That holding is also challenged by the petitioners in *Raby*, on the ground that a wage receipt which the petitioners there signed should be treated as a demand. But that is *not* the argument that petitioners make here. Here petitioners are taking the position that this appeal is from a judgment of dismissal under FRCP 12(b)(6) and that the facts in the complaint must be taken as true for purposes of such a motion. Thus, they argue, since the complaint says that there was a demand, the trial court and the Ninth Circuit should have assumed there was a demand. The complaint does not say that the demand petitioners had in mind was a wage receipt, so the court cannot use the wage receipt's failure to qualify as a "demand" as a basis for holding that there was no demand.

The issue, then, that petitioners raise here is not, as in *Raby*, whether a wage receipt can be a demand. Unlike that question, it is not a question about the meaning of a statute. Petitioners' complaint is that the union should have been allowed to prove that a demand had been made, and that the trial court dismissed the complaint without allowing them to do so. The issue petitioners raise here, in other words, is whether the court of appeals erred when it did not reverse the trial court for allegedly misapplying FRCP 12(b)(6).

The question in fact presented by this petition is whether the trial court made an elementary procedural

error and the court of appeals erred by not catching it. Passing the entirely appropriate reasons why the trial court dismissed the action without letting the union go to trial on the "demand" issue,[6] the question presented simply is not of sufficient importance to justify this Court's grant of certiorari.

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[6]The complaint does not plead a demand for half wages, but rather for full wages; and it does not plead that any of the alleged demands occurred in a U.S. harbor. It sets out the language of subsections (f), (g), and (i), but not the language of (e). It expressly states that the subsections it sets out are the ones that are "pertinent" to its claim. It alleges facts which track the requirements of (f), but not of (e). Most importantly, in his written response to the motion to dismiss Mr. Dodson did not claim that he was pleading a §10313(e) claim. In fact, even on reconsideration, his written submission did not make the argument. It was first raised on oral argument after the trial court granted a motion to reconsider the order dismissing the claim. At that point, the trial court noted the absence of any evidence of a demand, which might have been inappropriate initially, but not when the theory was raised so late.

Of critical importance was the fact that in this oral argument Mr. Dodson admitted that the demands he was referring to were wage receipts. The trial court arguably had the discretion at that point to view this preposterous argument as a desperate attempt to fend off dismissal. In any event, this court will know that if it were to reverse the order dismissing for failure to state a claim, the claim will ultimately be dismissed on summary judgment when it becomes clear that the only demand referred to was a wage receipt.

It is true that there is one reference to subsection (e) in the complaint, but that is an obvious error because in the con . of the pleading it could only have been subsection (f) that was me nt.

III.

PETITIONERS' CLAIM THAT THERE IS A CONFLICT BETWEEN THE NINTH CIRCUIT AND THE FOURTH CIRCUIT IS BASED ON THE MISPERCEPTION OF THE NINTH CIRCUIT'S HOLDING IN THIS CASE DISCUSSED ABOVE AND ON A MISREADING OF THE *FITZGERALD* CASE.

Petitioners claim that the "Ninth Circuit intends that the wage statute should not apply to foreign seamen discharged in a foreign port, even when the wrongful withholding of wages occurs in a United States port." This position, they say, is in conflict with other circuits. It is conceded that there would be a conflict if the Ninth Circuit took this position, but as we have shown above, the Ninth Circuit does not take this position.

There is an apparent conflict between the Ninth Circuit's holding that under subsection (f) a seaman has no cause of action unless discharged in a U.S. harbor and dictum in *Fitzgerald v. Liberian S/T Chryssi P. Goulandris*, 582 F.2d 312 (4th Cir. 1978), where the court says that American wage statutes are not necessarily inapplicable where there is an extraterritorial discharge. Dictum, however, cannot create a conflict, since in the absence of a holding there is no law on the subject, merely a judge's opinion.

In addition, the court there was uncritically lumping together a number of different provisions – particularly the anti-advance statute, §10314, and §10313(f). The court's only support for its position was a case dealing with §10314, *Heros v. Cockinos*, 177 F.2d 570 (4th Cir. 1949). But that statute does not require a discharge in a U.S. harbor for the same reason that subsection (e) does not. Termination of a seaman's employment (i.e., his discharge) is not one of the elements of the cause of

action. The cause of action consists of making an advance of wages before they have been earned. If it is made to a seaman on a foreign vessel it must be made while the vessel is in U.S. waters. 46 U.S.C. §10314(c). When or where the discharge occurs is irrelevant. Accordingly, there is no conflict between the Ninth Circuit and the circuits which have held that a claim under the advance statute is not defeated by an extraterritorial discharge.

The Petition for Certiorari also contends that eight other cases conflict with the Ninth Circuit's holding here. These cases are: *Southern Cross S.S. Co. v. Firipis*, 285 F.2d 651 (4th Cir. 1960), *cert. den.*, 365 U.S. 869 (1961); *Arguelles v. U.S. Bulk Carriers*, 408 F.2d 1065 (2d Cir. 1969), *aff.*, 400 U.S. 351 (1971); *The Sonderborg*, 47 F.2d 723 (4th Cir. 1981), *cert. den.*, 284 U.S. 618 (1931); *Escobar v. S.S. Washington Trader*, 640 F.2d 1063 (9th Cir. 1981); *Morewitz v. Andros Compania Maritima, S.A.*, 614 F.2d 379 (4th Cir. 1980); *Henry v. S.S. Bermuda Star*, 863 F.2d 1225 (5th Cir. 1989); *Thomas v. S.S. Santa Mercedes*, 572 F.2d 1331 (9th Cir. 1978); and *American Foreign Steamship Co. v. Matise*, 488 F.2d 469 (9th Cir. 1974), *rev.*, 423 U.S. 150 (1975).

These cases do not conflict with the Ninth Circuit's ruling. Three (*Southern Cross*, *The Sonderborg* and *Henry*) involve the discharge of a seaman in a U.S. harbor. In the present case no seaman was discharged in a U.S. harbor. Four of the cases (*Arguelles*, *Escobar*, *Thomas* and *American Foreign Steamship Co. v. Matise*) involve American ships; it is conceded that seamen on American ships need not be discharged in a U.S. harbor to recover under §10313. The eighth case, *Morewitz*, was dismissed because the wage claim used to establish jurisdiction was not asserted in good faith. The seaman died, and as *Fitzgerald* had held, the death was not a "discharge."

IV.

THE NINTH CIRCUIT'S HOLDINGS IN THIS CASE ARE CLEARLY CORRECT AND DO NOT REQUIRE FURTHER REVIEW.

Although the petition does not actually challenge the holdings of the Ninth Circuit, we discuss them to avoid any implication that they are in any way flawed.[7] The Ninth Circuit's holding that a seaman on a foreign vessel has no cause of action under subsections (f) and (i) follows irresistibly, as the court's opinion clearly shows, from the presumption against extraterritorial application of American law, the structure of Chapter 103 of Title 46 and the plain meaning of subsection (i) itself.

Section 10301 of Title 46 provides:

> (c) Unless otherwise provided, this chapter does not apply to a foreign vessel.

Section 10313(e), (f), and (i) provide in pertinent part:

> (e) After the beginning of the voyage, a seaman is entitled to receive from the master, on demand, one-half of the balance of wages earned and unpaid at each port at which the vessel loads or delivers cargo during the voyage . . . .
>
> (f) At the end of a voyage, the master shall pay each seaman the balance of wages due the seaman within 24 hours after the cargo has been discharged or within 4 days after the seaman is discharged, whichever is earlier . . . .
>
> * * * *

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[7] For the discussion of the holding that a wage receipt is not a demand, we incorporate by reference the argument in the Brief in Opposition to the Petition for Writ of Certiorari in No. 92-1316, *Raby v. M/V Pine Forest.*

> (i) This section applies to a seaman on a foreign vessel when in a harbor of the United States. The courts are available to the seaman for the enforcement of this section.

The plaintiffs' argument throughout these proceedings has been that the presumption against extraterritoriality and the plain language of 46 U.S.C. §10301 and §10313-(i) should be disregarded in favor of a purpose derived from the legislative history of the 1915 revisions of the Act. This, of course, is impermissible. *Griffin v. Oceanic Contractors*, 458 U.S. 564 (1982); *Rodriguez v. United States*, 480 U.S. 522 (1987). Legislative history may only be consulted in a case like this to determine if there is a clearly expressed intention of Congress that contradicts the result yielded by faithfully following the statute's language. *E.g., Griffin, supra.* A broad general purpose does not establish such a specific intent and no plaintiff in any of these cases has cited evidence clearly establishing that Congress would have had the Seaman's Wage Act apply to a failure to pay wages when seamen on a foreign vessel were discharged in a foreign port.

Accordingly, the legislative history of the 1915 version of the Act should not have been considered further. *Rodriquez, supra,* at 526:

> Where, as here, the language of a provision . . . is sufficiently clear in its context and not at odds with the legislative history, . . . "[there is no occasion] to examine the additional considerations of 'policy' . . . that may have influenced the lawmakers in their formulation of the statute."

The Court should not infer, however, that the legislative history supports the plaintiffs' position. That history shows on the contrary that there were very specific reasons why the predecessor of subsection (i), 46 U.S.C.

§597, limited the rights it granted seamen on foreign vessels to the time when they were in U.S. harbors.

In 1915 Congress enacted broad revisions of seamen's law. Among the more important changes were revisions to section 4530, the "half wages" statute. Codified as 46 U.S.C. §597, it was amended to provide:

> Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs one-half part of the balance of his wages earned and remaining unpaid at the time when such demand is made at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended, and all stipulations in the contract to the contrary shall be void; Provided, Such a demand shall not be made before the expiration of, nor oftener than once in five days nor more than once in the same harbor on the same entry. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned. And when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall be then due him, as provided in section 596 of this title: . . . *And provided further,* that this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement . . . .

The dominant figure behind the new half wages provision was Andrew Furuseth, President of the Seaman's Union of America. Bickel, *Strathearn S.S. Co. v. Dillon,* 69 Harv. L. Rev. 1177 (1956) at 1200-01. Furuseth claimed that shipowners had largely enslaved American seamen in two ways: first, by signing men to long-term

contracts, advancing salary and thereby indebting them to the vessel; and, although arrest for desertion had earlier been abolished in the coastwise trade, using existing law to arrest seamen on American vessels for desertion in foreign ports, thereby tying them to their vessels when they were out of the country. *Id.* at 1180-81, 1183, 1201.

A. Abolishing Involuntary Servitude of Seamen On Foreign Vessels "While in Ports of the United States"

When the proposed legislation was before Congress in 1913, it was entitled in part:

> An act to abolish involuntary servitude imposed upon seamen in the Merchant Marine of the United States while in foreign ports and the involuntary servitude imposed upon the seamen of the Merchant Marine of foreign countries while in ports of the United States . . . .

Hearings on H.R. 23673, Senate Commerce Subcommittee, 62d Cong., 3rd Sess. (1912). The Act emancipated the American seaman by allowing him to break his contract in a foreign port and, under §597, demand one-half of his earned wages and leave the vessel. The other half of his earned wages was forfeited as liquidated damages for the breach of contract. Cong. Rec. Senate, Oct. 22, 1913, p. 5749, col. 2 (remarks of Senator Fletcher).

The "involuntary servitude imposed" on foreign seamen while in United States ports referred to our obligation to enforce the contracts binding seamen to foreign vessels when they were in our ports. Bickel, *supra*, at 1183. Sec .. 597, along with the new law abolishing arrest of f e gn seamen for desertion, was designed to

eliminate this condition as well. Oppressed seamen on foreign vessels were given a right to half wages in an American port, and the means thereby to leave their vessels when they reached our shores. *Id.* at 1190.

Furuseth wanted the right to half wages extended to seamen on foreign vessels not to protect them, but to help American seamen and revive the declining American merchant marine. *Monteiro v. Sociedad Maritima San Nicolas, S.A.*, 280 F.2d 568, 573, col. 2 (2d Cir. 1960) (Friendly, J.); Bickel, *supra*, at 1190. Furuseth's purpose, expressed by Senator Fletcher on the floor of the Senate, was:

> to equalize the wage cost of operating vessels, foreign and domestic, taking cargos or passengers from ports of the United States.

Cong. Rec. Senate, Oct. 22, 1913, p. 5748.

B. The Limited Method By Which Wage Equalization Was To Be Encouraged

The method by which wage equalization was to be accomplished was an indirect one. Even Furuseth did not urge Congress to directly require foreign ships trading in U.S. waters to pay their seamen the same wages U.S. seamen earned. Instead, he relied on the changes in desertion law and the "half wages" statute to accomplish this aim gradually.

These amendments, insofar as they applied to seamen on foreign vessels earning low wages, had the unabashed purpose of encouraging desertion when they reached American ports. In theory, the men would then ship on American vessels at higher wages. Foreign shipowners, to avoid losing seamen, would have to raise their wages if they wished to continue trading in American ports.

Furuseth Statement, Subcommittee, Commerce Committee, U.S. Senate 62nd Cong., 3rd Sess. 79 (Sept. 8, 1913). A committee report set out the theory:

> Under existing laws men may be and are employed at the ports where the lowest standard of living and wages obtain. The wages in foreign ports are lower than they are in the ports of the United States; hence the operating expenses of a foreign vessel are lower than the operating expenses of an American vessel. It is not proposed to prevent vessels from employing seamen in ports where they can secure them cheaper, but it is proposed by the bill to give the seamen the right to leave the ship when in safe harbor and in time this will result in foreign seamen engaged on vessels coming into ports of the United States being paid the same wages as obtain here, as a means of retaining their crews for the return voyage.

Bickel, *supra*, 69 Harv. L. Rev. at 1191, *quoting*, Report to H.R. 62nd Cong. 2d Sess. May, 1912. See also Furuseth Statement, Subcommittee, Commerce Commitee, U.S. Senate, 62nd Cong., 3rd Sess. 79 (Sept. 18, 1913). Bickel, *supra*, 69 Harv. L. Rev. at 1183.

Section 597 abrogated the traditional maritime rule that a vessel is governed by the law of its own country even when it is in a foreign port. *Id.* at 1185, 1194. Accompanying sections abrogated treaties providing for enforcement by American courts of foreign seamen's contracts. *Id.* at 1184-85, 1194-95. There were Congressional objections to these departures from international law and fears of retaliation by other countries. Hearings on H.R. 23673, Subcomm., Commerce Comm., Pt. II, p. 718, 720 (1912) (exchanges between Furuseth and Senators Nelson and Burton); Cong. Rec., Senate,

p. 5748, col. 1 (remarks of Senator Bacon); Bickel, *supra*, at 1191.

The response by the legislation's supporters was that international law permitted the United States to apply its own law to any person within its jurisdiction.

> We have the legal right to say to the world that no man shall be liable to arrest and to be restrained of his liberty in our ports because he sees fit to break a contract, onerous or otherwise.

Cong. Rec., Senate, p. 5749, col. 2 (emphasis supplied).

But they noted that the section was only

> applicable to foreign vessels while they are within the jurisdiction of our laws.

Cong. Rec. Senate, October 23, 1913, p. 5749, col. 1 (Remarks of Senator Fletcher); Bickel, *supra*, at 1193:

> . . . the United States gives this right to seamen on foreign vessels when they enter our ports; and that is practically the extent of our sovereign power.

See also the exchange between Furuseth and Senator Nelson, Hearings, *supra*, at 718-719.

C. No Evidence that the Balance of Wages Provision Was Intended to be Extended to Seamen on Foreign Vessels

In the 1915 revisions of the Act, R.S. 4529, the "full wages" provision, became 46 U.S.C. §596. Section 596 was almost identical to its predecessor, except that the penalty per day is raised from one day's pay to two day's pay. Section 596, now §10313(f), did not contain a clause extending it to foreign vessels. There appears to be almost no legislative history of this section and no suggestion that it was intended to play any role in the plan

to emancipate seamen and promote equalization of wages between American and foreign vessels. This may be because vessels that typically ended their voyages in United States ports were American vessels who would already be paying American wages. In addition, by definition, those few seamen on foreign vessels who were already going to terminate their voyages in the United States for other reasons did not need to be encouraged to do so by amending the full wages provision.

In 1931, in *The Sonderborg*, 47 F.2d 723 (4th Cir.), however, the Fourth Circuit held that §596 also applied to seamen on foreign vessels when in a port of the United States. The court relied on §597's reference to §596 and concluded that the two sections should be treated as one and both should be available to all foreign seamen in our harbors.[8] *The Sonderborg* opinion does not mention the legislative history of §597 and the purposes attributed to it by its sponsors.

In *Monteiro v. Sociedad Maritima San Nicolas, S.A.*, 280 F.2d 568, 572-73 (2d Cir. 1960), Judge Friendly, who was aware of the legislative history of §597, questioned the result in *The Sonderborg*. He noted, however, that the holding had been followed (without significant discussion) by his and other circuits and was therefore binding. As part of the 1983 codification, the full wages provision was expressly extended to foreign seamen in §10313(i).

---

[8]The language on which the Court relied, however, had been in the 1898 version of the half wages provision when there was no intent to extend either R.S. 4530 or 4529 to the seamen on foreign vessels.

D. Lessons from the Legislative History

In sum, there is no legislative history that the full wages provision – now §10313(f) – was extended to foreign vessels to equalize wages. As for the half wages provision, it was critical to the thinking behind its extension to such vessels that it apply only while they were in our ports. This was because (a) the purpose was to get the seamen to leave while in our ports, not some other country's, so that they could reship on American vessels at U.S. wages, and (b) to limit the encroachment of U.S. laws on foreign citizens to the area in which the U.S. indisputably had jurisdiction under international law.

Congress – with the vigorous assistance of the Immigration and Naturalization Service – has itself nullified the purposes of the 1915 revision by preventing the discharge in the U.S. of foreign seamen and preventing their re-shipment on U.S. vessels. 8 U.S.C. §1281 *et seq.* The theory of the revision in any event was destined to failure. The American merchant marine has continued to decline and Congress has done nothing, except in times of emergency, to halt that decline. Indeed, there is substantial evidence that lower cost shipping benefits American farmers, businesses and consumers. The equalization purpose of some legislators in 1915, therefore, cannot be viewed as a legitimate basis for countermanding the plain language and structure of the Act today.

CONCLUSION

The Petition for Certiorari should be denied.

Respectfully submitted,

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April 9, 1993

APPENDIX I

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Civil No. 90-165 JU

COMPLAINT (BREACH OF MARITIME CONTRACT *IN REM* AND IN PERSONAM AND FOR DAMAGES)

I HYEON SU, JO SEONG GU, GIM YEONG HO, PARK MIN HO, JEONG JU GOANG, KIM KYONG SU, KIM IN SOK, KIM CHUNG IL, BAG HAN KIL, O HAN SEON, BARG YEONG PAL, KIM OG NAM, PYEON YUN SU, JI JE JE, LEE SIL GWANG, SON CHI IL, SEO JEOM TAE, KA CHAE HO, CHU CHAE SOK, PARK SUNG OK, CHOI WEON IL, and FEDERATED KOREAN SEAMEN'S UNION (hereinafter "FKSU"),

Plaintiffs,

v.

M/V SOUTHERN ASTER, *In Rem,* and
SOUTHERN ASTER NAVIGATION, S.A.,

Defendants.

Plaintiffs allege that:

NATURE OF CASE

1. This is an admiralty case to recover unpaid wages, penalty wages, and other damages for the former crew of Defendant, M/V Southern Aster.

JURISDICTION

2. Plaintiffs, I HYEON SU, JO SEONG GU, GIM YEONG HO, PARK MIN HO, JEONG JU GOANG, KIM KYONG SU, KIM IN SOK, KIM CHUNG IL, BAG HAN KIL, O HAN SEON, BARG YEONG PAL, KIM OG NAM, PYEON YUN SU, JI JE JE, LEE SIL GWANG, SON CHI IL, SEO JEOM TAE, KA CHAE HO, CHU CHAE SOK, PARK SUNG OK, and CHOI WEON IL, are persons of the full age of majority, residents of and domiciled in the Republic of Korea, and they appear herein individually through their agent and representative, FEDERATION OF KOREAN SEAFARERS' UNIONS (hereinafter "FKSU").

3. Jurisdiction is founded on United States Const. Art. III, pursuant to federal jurisdiction over the claims in admiralty and maritime, and pursuant to federal question jurisdiction; §1333 of the Judicial Code, 28 U.S.C. §1333; §101212(i) of the Shipping Code, 46 U.S.C. §10313(i); and the General Maritime Law of the United States of America.

CLAIM FOR RELIEF

4. Defendants herein are:

M/V SOUTHERN ASTER, a vessel that is or will be during the pendency of this action within the jurisdiction of this Court; and

SOUTHERN ASTER NAVIGATION, S.A., a foreign corporation, not registered in but doing business in the State of Oregon, more particularly within the territorial jurisdiction of the United States District Court for the District of Oregon;

who are the owners, managers, operators and/or agents of the vessel M/V Southern Aster, which flies the flag of Panama, said vessel being within the territorial waters of the United States District Court for the District of Oregon at the time of breach of a maritime contract.

5. All individual Plaintiffs (hereinafter "Seamen Plaintiffs") were employed aboard the M/V Southern Aster as seamen in various capacities commencing on or about March 16, 1988, with the exception of Park Sung Ok and Choi Weon Il who were employed April 25, 1988 and August 26, 1988, respectively. Attached hereto as Exhibit "A", pages 1 through 3, are the shipping articles which constitute the seamen's individual employment contracts obligating Defendants to pay the salaries and benefits specified therein in accordance with the ITF/FKSU Collective Bargaining Agreement.

6. Seamen Plaintiffs were not paid in accordance with the terms of their contracts or shipping articles, or the Special Agreement and Collective Agreement, but were paid at a lesser rate by the Defendants despite Seamen Plaintiffs' requests for their full wages each month and at the termination of each voyage. In order to receive any portion of their rightful wages, Seamen Plaintiffs were

required to sign monthly two sets of portage bills or wage receipts, one set being false acknowledging receipt of the amount of wages due under Seamen Plaintiffs' contract, and the other set reflecting the actual amount paid to each Seamen Plaintiff.

7. As of February 20, 1990, it is unknown how much each Seamen Plaintiff was paid in wages during their employment on board the M/V Southern Aster; however, said amount will be ascertained through discovery. Nevertheless, on information and belief, Seamen Plaintiffs are entitled to significant sums of back wages, believed to be collectively in the aggregate sum of approximately $250,000.00, which were withheld in violation and in breach of the shipping articles and contracts.

8. Section 10313 of the Shipping Code (46 U.S.C. §10313) provides, in pertinent part, as follows:

> "(f) At the end of a voyage, the master shall pay each seaman the balance of wages due the seaman within 24 hours after the cargo has been discharged or within 4 days after the seaman is discharged, whichever is earlier. When a seaman is discharged and final payment of wages is delayed for the period permitted by this subsection, the seaman is entitled at the time of discharge to one-third of the wages due the seaman.
>
> "(g) When payment is not made as provided under subsection (f) of this section without sufficient cause, the master or owner shall pay the seaman 2 days' wages for each day payment is delayed.
>
> "* * * * *
>
> "(i) This section applies to a seaman on a foreign vessel when in a harbor to the United States. The Courts are available to the seaman for the enforcement of this section."

9. Defendant, M/V Southern Aster, is a foreign vessel in a harbor of the United States.

10. Seamen Plaintiffs were not paid by the Defendants herein for their full wages and back pay in accordance with the terms of their contracts and shipping articles pursuant to the provisions of 46 U.S.C. §10313. The Defendants intentionally refused to pay the full wages due Seamen Plaintiffs after each and every voyage in which cargo was discharged and at the termination of the Seamen Plaintiffs' employment.

11. By the aforesaid conduct, Defendants intentionally, willfully, and wrongfully violated Seamen Plaintiffs' rights under 46 U.S.C. §10313(e) and, accordingly, Seamen Plaintiffs are entitled to two (2) days' pay for each and every day during which payment has been delayed. The amounts of these penalty wages due to February 28, 1990, for all Seamen Plaintiffs are the collective sum of $13,010,029.85 all as shown in Exhibit "B" attached hereto. The penalty wages will continue to accrue and Exhibit "C" attached hereto shows a month-by-month increase in said penal wages to December, 1991, when the collective sum due is $28,821,395.23.

12. The Defendants' conduct in paying them at a rate lower than stipulated in the shipping articles and requiring Seamen Plaintiffs to sign two sets of wage receipts constitutes fraud and is willful and wanton conduct in gross disregard of Seamen Plaintiffs' rights and constitutes a maritime tort under the General Maritime Law of the United States of America. Defendants' willful and wanton conduct warrants the imposition of compensatory and punitive damages herein in the sum of $300,000 each ($6.6 million collectively, $3,300,000 as compensatory damages and $3,300,000 as punitive damages) in

addition to the wages and penalty wages sought above, plus attorneys' fees and all costs of this proceeding.

13. By virtue of Defendants' failure to timely pay the back wages due to Seamen Plaintiffs, and the Defendants' intentional bad faith conduct warranting compensatory and punitive damages, a maritime lien has arisen against the vessel M/V Southern Aster, a vessel flying the flag of Panama, and whose call sign is 3EJJ6 and whose official number is 17750-88; whose gross weight is 14,286 tons, and net weight 8,499 tons, which Seamen Plaintiffs seek to enforce in this suit.

14. Seamen Plaintiffs allege upon information and belief that after due and diligent search that the Defendant, herein, Southern Aster Navigation, S.A., is not present within this District, but that their chattel, the M/V Southern Aster, is now or will be present within this District during the pendency of this action. Seamen Plaintiffs therefore request that a writ *in rem* issue herein arresting the said M/V Southern Aster, pursuant to Rule C of the Federal Supplemental Rules for Admiralty and Maritime Claims.

15. Plaintiff FKSU is a labor union licensed in the Republic of Korea and is authorized to bring suit in the name of seafarers on board the M/V Southern Aster. The crew members on board the M/V Southern Aster granted this authority to FKSU by their membership in said union, and the Defendants acknowledged and agreed in their Collective Bargaining Agreement that FKSU has the right to represent said crew members and bring legal action in their names on their behalf.

WHEREFORE, on their Claim for Relief, Seamen Plaintiffs, I HYEON SU, JO SEONG GU, GIM YEONG HO, PARK MIN HO, JEONG JU GOANG, KIM KYONG SU,

KIM IN SOK, KIM CHUNG IL, BAG HAN KIL, O HAN SEON, BARG YEONG PAL, KIM OG NAM, PYEON YUN SU, JI JE JE, LEE SIL GWANG, SON CHI IL, SEO JEOM TAE, KA CHAE HO, CHU CHAE SOK, PARK SUNG OK, CHOI WEON IL, and FEDERATION OF KOREAN SEAFARERS' UNIONS, pray for Judgment as follows:

1. Against the Defendants, M/V Southern Aster, *In Rem,* and Southern Aster Navigation, S.A., *in personam,* jointly and severally, for the past due wages unpaid as stated in the Complaint, (Paragraph 7);
2. Against the Defendants, M/V Southern Aster, *In Rem,* and Southern Aster Navigation, S.A., jointly and severally *in personam,* for an amount equal to two (2) days' pay for each and every day in which payment has been delayed to February 28, 1990 (as shown in Paragraph 11, Exhibit "B" of this Complaint) in the collective sum of $13,010,-029.85;
3. Against the Defendants, M/V Southern Aster, *In Rem,* and Southern Aster Navigation, S.A., *in personam,* jointly and severally, for an additional amount equal to two (2) days' pay for each and every day in which payment has been delayed for wages due Plaintiffs to date of payment; the amount becoming due as of December, 1991 (as shown in Paragraph 11, Exhibit "C"), in the collective sum of $28,821,395.23;
4. Against the Defendants, M/V Southern Aster, *In Rem,* and Southern Aster Navigation, S.A., jointly and severally *in personam,* for punitive damages in the sum of $300,000 each (collectively in the sum of $6,300,000), reasonable attorneys fees, interest, and costs;

5. A writ *in rem* issue for the arrest of the M/V Southern Aster, and that all persons claiming any interest therein be cited to appear and answer the matter aforesaid, and that said vessel be condemned and sold to satisfy Plaintiffs' damages; and
6. Against the Defendants, M/V Southern Aster, *In Rem*, and Southern Aster Navigation, S.A., for the amount of their respective claims, with interest, costs, penalties, and attorneys' fees, and that the M/V Southern Aster be sold to pay the same.

RESPECTFULLY SUBMITTED this 21st day of February, 1990.

LAW OFFICES OF RICHARD J. DODSON

By/s/ Richard J. Dodson
Richard J. Dodson
La. Bar Roll No. 4982
Thomas E. Richard
La. Bar Roll No. 11232

BULLIVANT, HOUSER, BAILEY,
PENDERGRASS & HOFFMAN

By /s/ John W. Buehler
John W. Buehler
OSB #77128

Attorneys for Plaintiffs

PANAMA
ROL DE TRIPULACION DEL BUQUE
VESSEL CREW LIST

No. 10047-C

"It is agreed that the wages and employment conditions of all seafarers serving on board the above vessel shall be governed by the terms of the current ITF/FKSU agreement attached below with effect from 16th, Mar., 1988.

The owners also agree that despite whatever may be printed or written in these articles by any seafarer at the time of discharge from the ship shall not amount to a release of the owners and/or the vessel from any claim for wages of any other claim of the seafarer which is outstanding at discharge but shall amount only to an acknowledgement of discharge and receipt of wages at discharge shall not be treated as full and final settlement of all outstanding wages."

Name of Vessel: SOUTHERN ASTER
Master: YASUO UCHINO

[SEAL]

/s/ Jean A. Esteifeaut O.
Embajador de Panama
Ancargado de Las Aboutus Consulares
Seoul, Korea

	Posición a bordo Position on board	Nombre y apellido Complete name Numero de certificado o carnet marino Certificate or Competence or seafarers card number	Lugar de nacimiento Birth place Nacionalidad Nationality	Edad Age No. de pasaporte Passport No	Domicilio Home address	Nombre del pariente más próximo Next of Kin Dirección Address
1	CAPT	YASUO UCHINO	KAGOSHIMA PREF. JAPAN	54 MH-1168483	32-17, MEGASHI ICHIKI CHO. HIOKI GUN, KAGOSHIMA PREF. JAPAN	SATSUKO UCHINO SAME AS HOME ADD
2	C/O	HYEON SU. I	SEOUL KOREA	33 MP-810-22469	GARAK SIYEONG APT. 66 DONG. 107 HO. GARAK DONG. KANG DONG KU. SEOUL. KOREA	ANGI. KIM SAME AS HOME ADD
3	2/O	SEUNG GU. IO	SEOUL KOREA	28 MS-832-31206	NO. 452-40, MINGMI-1 DONG, NAMKU. PUSAN KOREA	EUI SIM, SEO SAME AS HOME ADD
4	3/O	YEONG HO GIM	PUSAN KOREA	27 BS-830-49174	NO. 554. 3TONG. 1BAN. CHORYANG DONG. DONG KU. PUSAN. KOREA.	SU SEONG. KIM SAME AS HOME ADD
5	C/E	SUSUMU TAKATA	KAGAWA PREF. JAPAN	51 MM-3430995	2232-2. NAKAHIME. OHNOMARA CHO. MITOYOGUN. KAGAWA PREF. JAPAN	TERUKO TAKATA SAME AS HOME ADD
6	1/E	MIN HO PARK	KWANGJU KOREA	33 PM-754-83262	#1045-34. 8 DONG. WEOLSAN DONG. SEOGU. KWANGJU. KOREA	GYEONG SUN, HAN SAME AS HOME ADD
7	2/E	JI GUAN. JEONG	GYEONGBUK KOREA	31 PM-782-83208	JEONPO APT. 5 DONG 410 HO. JEONPO 1 DONG. JIN KU. PUSAN. KOREA	JEONG LIM, LEE SAME AS HOME ADD
8	3/E (ELELT)	KYONG SU. KIM	JEONBUK KOREA	22 MP-867-22038	NO. 157-17. 3 TONG. 4BAN. 16A. NAM JUNG DONG. IRI. KOREA	YEONG PIL, KIM SAME AS HOME ADD
9	R/O	IN SOK. KIM	SEOUL KOREA	25 MP-8444-22228	NO. 389-6. SSANGMUN DONG. TOBONG KU. SEOUL, KOREA	SUN HEUI, KIM SAME AS HOME ADD
10	BSN	CHUNG IL KIM	GYEONGNAM KOREA	52 BS-712-50212	NO. 83-9. SAJIK 2 DONG. DONG RAE KU. PUSAN. KOREA	SANG SUN, NO SAME AS HOME ADD
11	ABA	HAN KIL. BAE	GYEONGGI KOREA	38 IC-745-10173	NO. 267. JEONGWANGDONG. GUNJAM/EON. SIHEUNGGUN. GYEONGGI. KOREA	YEONG JA, KOM SAME AS HOME ADD
12	ABB	HAN SEON. O	JEJUDO KOREA	36 BS-506-45783	2 TONG. 5BAN. NO. 28. 3GA. NAM HANG DONG. YEONG DEOK. PUSAN	YUN SUN, KIM SAME AS HOME ADD

Salario Salary	Sumas adelantadas del Salario Salary advance	Duración del Contrato Date of conclusion of contract	Puerto de Embarque Port of Enrolment Firma del tripulante Signature of crew member	Lugar y Fecha Place and Date	Nombre y firma del Cónsul Name and signature of the Consul
AS PER AJU'S LABOUR AGREEMENT				SHIMIZU. JAPAN MAR. 16TH. 1988	
1.544.40				- do -	
1.064.80				- do -	
937.20				- do -	
AS PER AJU'S LABOUR AGREEMENT				- do -	
1.544.40				- do -	
1.064.80				- do -	
937.20				- do -	
1.544.40				- do -	
1.064.80				- do -	
770.00				- do -	
655.60				- do -	

Puerto de Desembarco Port of Discharge Firma del tripulante Signature of crew member	Lugar y Fecha Place and Date	Nombre y firma del Cónsul Name and signature of the Consul
	SHIMIZU. JAPAN JAN 22ND. 1989	CONSULADO GENERAL DE PANAMA KOBE JAPON
	GAMAGORI. JAPAN MAR 15TH. 1989	CONSULADO GENERAL DE PANAMA KOBE JAPON
	"	CONSULADO GENERAL DE PANAMA KOBE JAPON
	"	CONSULADO GENERAL DE PANAMA KOBE JAPON
	OSAKA JAPAN 24TH JUNE 1989	
	GAMAGORI. JAPAN MAR 15TH. 1989	CONSULADO GENERAL DE PANAMA KOBE JAPON
	"	CONSULADO GENERAL DE PANAMA KOBE JAPON
	"	CONSULADO GENERAL DE PANAMA KOBE JAPON
	"	CONSULADO GENERAL DE PANAMA KOBE JAPON
	"	CONSULADO GENERAL DE PANAMA KOBE JAPON
	OSAKA. JAPAN AUG. 26TH. 1988	CONSULADO DE PANAMA OSAKA JAPON

BEST AVAILABLE COPY

2

	Posición a bordo Position on board	Nombre y apellido Complete name Número de certificado o carnet marino Certificate or Competence or seafarers card number	Lugar de nacimiento Birth place Nacionalidad Nationality	Edad Age No. de pasaporte Passport No.	Domicilio Home address	Nombre del pariente más próximo Next of Kin Dirección Address	Salario Salary	Sumas adelantadas del Salario Salary advance	Duración del Contrato Date of conclusion of contract	Puerto de Embarque Port of Enrolment Firma del tripulante Signature of crew member	Lugar y Fecha Place and Date	Nombre y firma del Cónsul Name and signature of the Consul	Puerto de Desembarco Port of Discharge Firma del tripulante Signature of crew member	Lugar y Fecha Place and Date	Nombre y firma del Consul Name and signature of the Consul
1	A B C	YEONG PAL, BARK	GYEONGNAM	29	NO. 17-23, YANG JEONG 4 DONG, JIN KU, PUSAN, KOREA	SEON MEUI, YONG	655.60				SHIMIZU, JAPAN MAR. 16TH. 1988			GAMAGORI, JAPAN MAR. 14TH. 1988	CONSULADO GENERAL DE PANAMA KOBE, JAPON
			KOREA	BS 827-50685		SAME AS HOME ADD									
2	O.S	CG NAM, KIM	JEONNAM	37	NO. 145, BIRI, MEUKSAN DO, SINAN GUN, JEONNAM KOREA	HYEONG DAN, KIM	558.80				do			"	CONSULADO GENERAL DE PANAMA KOBE, JAPON
			KOREA	BS-770-43733		SAME AS HOME ADD									
3	O.S	YUN SU, PYEON	PUSAN	23	NO. SAN 62, 25 TONG 1 BAN, BEOM 6 DONG, DONG KU, PUSAN KOREA	JONG WEON, PYEON	558.80				do			OSAKA, JAPAN APR. 25 1988	CONSULADO DE PANAMA 12-26 AM
			KOREA	BS-845-41731		SAME AS HOME ADD									
4	REPAIR MAN	JE JE, JI	PUSAN	40	NO. 15-3, 3-GA, SINSEON DONG, YEONGDO KU, PUSAN, KOREA	SUN NEK, JEONG	1,016.40				do			GAMAGORI, JAPAN MAR 15TH 1988	CONSULADO GENERAL DE PANAMA KOBE, JAPON
			KOREA	CM-[illegible]-37642		SAME AS HOME ADD									
5	O.L.R	SIL GWANG LEE	GYEONGBUK	37	NO. 13-1007, 5 TONG 5 BAN, GAMCHEON 2 DONG, SAHA KU, PUSAN, KOREA	IL NYEO, KIM	770.00				do			"	[illegible]
			KOREA	BS-159-41809		SAME AS HOME ADD									
6	O.L.R	CHI IL, SON	PUSAN	33	NO. 29, NAM MANG-DONG, YEONGDO KU, PUSAN, KOREA	SAM SUN, JEON	655.60				do			"	CONSULADO GENERAL DE PANAMA KOBE, JAPON
			KOREA	BS-852-41[illegible]4		SAME AS HOME ADD									
7	C/S	JEOM TAE SEL	PUSAN	36	NO. 350-27, 4 TONG, 4 BAN, GOBJEONG 2 DONG, SAHA KU, PUSAN, KOREA	SUN JA, KIM	1,016.40				do			"	CONSULADO GENERAL DE PANAMA KOBE, JAPON
			KOREA	BS-781-42701		SAME AS HOME ADD									
8	C/K	CHAE HO KA	CHUNGNAM	24	NO. 43, 2 GU, YANG DAERI, SEOSAN EUB, SEOSAN GUN, CHUNGNAM, KOREA	GONG NO, KA	770.00				do			SHIMIZU, JAPAN DEC 2, 1988	CONSULADO DE PANAMA 12-26 AM
			KOREA	BS-883-42933		SAME AS HOME ADD									
9	S/B	CHAE SOK, CHU	JEONNAM	20	NO. 149-1, 6 GU, GUNNAEKI, WAN DO EUB, WANDO GUN, JEONNAM, KOREA	YONG BAE, JU	558.80				do			GAMAGORI, JAPAN MAR 15TH 1988	CONSULADO GENERAL DE PANAMA KOBE, JAPON
			KOREA	WD-867-240614		SAME AS HOME ADD									
10	O.S	SUNG CK PARK	JEONNAM	26	NO 1206, SUNGKYOK, MUNNAE MYEON, HAENAM GUN, CHUNNAM KOREA	SANG NAM, PARK	558.80				OSAKA, JAPAN APR 25 1988			"	CONSULADO DE PANAMA 12-26 AM
			KOREA	53 [illegible]-26		SAME AS HOME ADD									
11	ABB	WEON IL, CHOI	GYEONGNAM	47	3 1ST-1 MIJORI, SAMDANGMYON, NAMHAE GUN, GYONGNAM KOREA	YEONG SUN, LEE	770.00				OSAKA, JAPAN AUG 26 1988			"	CONSULADO GENERAL DE PANAMA KOBE, JAPON
			KOREA	BS MR-41401		SAME AS HOME ADD									
12	CAPT	TAKAMASA AZUMA	PREF. TOTTORI	53	M. 2CHOME CHI-CHO, SAKAIMINATO CITY, TOTTORI-PREF JAPAN	AGUNA KYOKO	[illegible]	Jan. 21st 1989			SHIMIZU, JAPAN JAN 21ST 1989				
			JAPAN	PASSPORT No. TH [illegible]		SAME AS HOME ADD									

BEST AVAILABLE COPY

[Exhibits B and C to Plaintiffs' Complaint, which appear as pages 13-16 of the Complaint, have been omitted because they consist solely of elaborate mathematical tables showing claimed penalty damages for each plaintiff, and these tables have no relevance to the question presented in the Petition for Certiorari.]

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

I HYEON SU, JO SEONG GU, GIM YEONG HO, PARK MIN HO, JEONG JU GOANG, KIM HYONG SU, KIM IN SOK, KIM CHUNG IL, BAG HAN KIL, O HAN SEON, BARG YEONG PAL, KIM OG NAM, PYEON YUN SU, JI JE JE, LEE SIL GWANG, SON CHI IL, SEO JEOM TAE, KA CHAE HO, CHU CHAE SOK, PARK SUNG OK, CHOI WEON IL, and FEDERATED KOREAN SEAMEN'S UNION (hereinafter "FKSU")

Plaintiffs

STATE OF LOUISIANA
COUNTY OF EAST BATON ROUGE

BEFORE ME, the undersigned authority, personally came and appeared, Richard J. Dodson, who after being by me first duly sworn, did depose and say:

That I have been appointed and retained, and I am presently serving as legal counsel in the United States of America for the Federated Korean Seamen's Union and in behalf of said union and its members I have been requested to initiate the instant proceeding. Further, I have been provided information by my client which forms the grounds for this proceeding and on the basis of the information so received and provided I have read the foregoing Petition and that all of the allegations of fact contained therein are stated in accordance with the information provided by my client and are true and correct to the best of my knowledge, information, and belief.

/s/ Richard J. Dodson
RICHARD J. DODSON

SWORN TO AND SUBSCRIBED before me this 19th day of February, 1990.

/s/ Richard P. Bullock
NOTARY PUBLIC
My commission expires
at life

APPENDIX II

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

No. 90-165-MA

I HYEON SU, JO SEONG GU, GIM YEONG HO, PARK MIN HO, JEONG JU GOANG, KIM HYONG SU, KIM IN SOK, KIM CHUNG IL, BAG HAN KIL, O HAN SEON, BARG YEONG PAL, KIM OG NAM, PYEON YUN SU, JI JE JE, LEE SIL GWANG, SON CHI IL, SEO JEOM TAE, KA CHAE HO, CHU CHAE SOK, PARK SUNG OK, CUOI WEON IL, and FEDERATED KOREAN SEAMEN'S UNION (hereinafter "FKSU"),

Plaintiffs,

v.

M/V SOUTHERN ASTER, In Rem, and SOUTHERN ASTER NAVIGATION, S.A.,

Defendants.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MALCOLM F. MARSH

APPEARANCES:
For the Plaintiffs: Jerry Dodson (telephonically); John Buehler

For the Defendants: Kathleen A. McKeon, Robert Sanders; Todd Zilbert

(Friday, February 23, 1990, 10:54 a.m.)

PROCEEDINGS

THE COURT: Let's everybody identify yourself on the record. Mr. Dodson, if you'd identify yourself.

MR. DODSON: Yes, Your Honor. I'm Jerry Dodson for the Plaintiffs.

MR. BUEHLER: John Buehler, also appearing for the Plaintiffs.

MS. McKEON: Kate McKeon, appearing for Defendants.

MR. SANDERS: Robert Sanders, appearing for Defendants.

MR. ZILBERT: Todd Zilbert, appearing for Defendants.

* * * *

THE COURT: All right. Now, we have two other issues that you need to address. The first is the verification of the complaint. My choices there are to either hold that I do not see good cause to require a delay in things or that I do bring about what has been requested by the Defendants for an affirmation by each of the Plaintiffs.

Now, in your information that you've given to me, Mr. Dodson, you have set forth that that is being accomplished in Korea by your paralegal and that you would expect to have that information available to you, I can't remember, within a week or so?

MR. DODSON: I believe I said two weeks, Your Honor.

* * * *

THE COURT: Are there any other matters you want to bring up?

MS. McKEON: No, Your Honor.

THE COURT: Mr. Dodson?

MR. DODSON: Yes, Your Honor, just one matter. As a matter of verification, I can have delivered to the Court by 5 o'clock Monday a verification signed by the agent attorney in fact of these 21 seafarers, president of the union in deed who signed the authorization to sign the suit. So he, as their agent, can sign the verification in lieu of me as their counsel, and he would sign it as their agent attorney in fact and the owner. It will take two weeks.

These union members are located throughout different parts of Korea. And it's a matter of seeing them, having them review in their native language the complaint and then obtaining verification from them from a notary. And that is no small task, Your Honor. Give you an example.

In Bosoon, a city of, oh, I think I around two million, there's one notary public. Indeed for the entire country of South Korea there's only something like 400 throughout. They have a very restricted stiff legal system there, Your Honor.

* * * *